88-228

No. .

Supreme Court, U.S.
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In the
Supreme Court of the United States.

OCTOBER TERM, 1988

JEFFREY ST. HILAIRE,
APPELLANT,

v.

STATE OF MAINE,
APPELLEE.

APPEAL FROM THE SUPREME JUDICIAL COURT OF MAINE.

JURISDICTIONAL STATEMENT.

NERIA R. DOUGLASS,
ELLIOTT L. EPSTEIN,
ISAACSON & RAYMOND,
75 Park Street,
P.O. Box 891,
Lewiston, Maine 04243-0891.
(207) 795-5000
Counsel for Appellant

July 29, 1988

BATEMAN & SLADE, INC. BOSTON, MASSACHUSETTS

50 pp

Questions Presented.

I. Whether the Maine Habitual Offender Statute, 29 M.R.S.A. § 2298, is unconstitutional: 1) by allowing conviction of a felony after an incorrect designation without actual notice; 2) by prohibiting Appellant's evidence showing the designation was incorrect, violating Fifth Amendment due process; or 3) by resting upon an unreliable, uncounseled prior conviction, violating the Sixth Amendment right to counsel.

II. Whether the Maine statute 29 M.R.S.A. § 58, permitting use of a hearsay certificate, is unconstitutional: 1) by prohibiting Appellant's Sixth Amendment right to confront his accuser; 2) by prohibiting Appellant's cross-examination; or 3) by establishing a conclusive presumption, violating Fifth Amendment due process.

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STATE OF MAINE,
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APPEAL FROM THE SUPREME JUDICIAL COURT OF MAINE.

JURISDICTIONAL STATEMENT.

Opinions Below.

The Opinion of the Maine Supreme Judicial Court appears in Appendix A, p. 1a, *infra* and is reported at A.2d (Me. 1988). The Order of the Oxford Superior Court, State of Maine, is not reported and appears in Appendix B, p. 6a, *infra*. Its Opinion is not reported, but appears in the trial transcript in Appendix C, p. 8a, *infra*.

Jurisdiction.

Appellant St. Hilaire appeals his felony conviction in the Oxford Superior Court of the charge of Operating While Being an Habitual Offender, 29 M.R.S.A. § 2298. After selection of the jury, the State moved to bar Appellant from confronting or cross-examining the State's chief witness, or offering other evidence regarding the correctness of the Secretary of State's designation of Appellant as an Habitual Offender, an element of the felony charged (Appendix B, p. 6a). The Oxford Superior Court granted the State's Motion, thereby prohibiting Appellant from offering proof of facts tending to show his innocence (Appendix B, E, pp. 6a, 20a). The State proved Appellant's status as an Habitual Offender by means of a hearsay certificate of the Secretary of State offered pursuant to a procedural statute of Maine, 29 M.R.S.A. § 58, not through any witness. Further, no proof was introduced or required to show Appellant had ever received actual notice, prior to his arrest, of his administrative designation as an Habitual Offender.

On appeal to the Maine Supreme Judicial Court, Appellant explicitly asserted the unconstitutionality of 29 M.R.S.A. § 58 insofar as it permitted use of a certificate to establish an element of the offense charged, asserting that the Statute violated his Sixth Amendment right to confront and cross-examine the witnesses against him. He also challenged, as a violation of Fifth Amendment due process, the conclusive presumption created in effect by 29 M.R.S.A. §§ 58 and 2298, in eliminating his right to present evidence in his defense. Finally, Appellant challenged 29 M.R.S.A. § 2298 as a violation of his Sixth Amendment right to counsel in that it permitted a conviction to be based, in part, upon an uncounseled, unreliable prior conviction and without proof of actual notice or correct designation of Habitual Offender status in violation of Fifth Amendment due process. Appellant provides his Statement of Issues

and Summary before the Maine Supreme Judicial Court in Appendix F, p. 24a, *infra*.

The Maine Supreme Judicial Court affirmed the judgment. It upheld the Maine Habitual Offender Statute, stating that the statute did not require a correct designation of Habitual Offender status nor actual notice to Appellant of the designation. By implication, it upheld and approved use of the certificate of the Secretary of State to prove that status and denied Appellant's challenges under the United States Constitution.

Jurisdiction of this Court exists pursuant to 28 U.S.C. § 1257(2).

The Opinion of the Supreme Judicial Court of Maine was entered on June 30, 1988 (Appendix A, p. 1a, *infra*). Notice of Appeal to this Court and Proof of Service was filed with the Maine Supreme Judicial Court on July 5, 1988 (Appendix D, p. 16a, *infra*).

Constitutional Provisions and State Statutes Involved.

United States Constitution, Amendment V:

> No person shall be . . . deprived of life, liberty, or property, without due process of law . . .

United States Constitution, Amendment VI:

> In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

29 M.R.S.A. § 58 (Supp. 1987), titled "Certificate as evidence" provides:

> Notwithstanding any other provision of law or rule of evidence, the certificate of the Secretary of State or his deputy, under seal of the State, shall be received in any court in this State as prima facie evidence of any fact stated in the certificate or documents attached thereto.

29 M.R.S.A. § 2292(4) (Supp. 1987), titled "Exceptions" provides:

> A person may not be an habitual offender for the purposes of this chapter when:
>
> * * *
>
> C. A person is convicted of the offense of operating a motor vehicle when his license, permit or privilege to operate has been suspended when the suspension is based upon his failure to appear in court or failure to pay his fine.

29 M.R.S.A. § 2294 (Supp. 1987), titled "Hearing procedure" provides:

> 2. *Issues*. If after hearing, the Secretary of State or his deputy finds that the person is not the same person named in the transcript or abstract and that the person's record does not bring him within the definition of an habitual offender . . . then the revocation shall be rescinded, but if the Secretary of State finds that the person is the same person named in the transcript or abstract and that the person's record brings him within the definition of an habitual offender, then the Secretary of State or his deputy shall

find the person to be an habitual offender and the revocation shall be invoked.

3. *Presumptions*. At the hearing the Secretary of State or his deputy may take official notice of the transcripts or abstracts. If the name and date of birth of the person requesting the hearing is the same as the name and date of birth of the person who is named in the transcript or abstracts, then the abstracts shall be prima facie evidence of that person's identity. The transcripts or abstracts shall also be prima facie evidence that the person named therein was duly convicted or adjudicated by the court, wherein the conviction or adjudication was made, of each offense shown by the transcripts or abstracts, and if the person shall deny any of the facts as stated, he shall have the burden of proving that those facts are untrue.

29 M.R.S.A. § 2298 (Supp. 1987), titled "Penalty" provides:

> It shall be unlawful for any person to operate any vehicle on a public way . . . in this State while the revocation prohibiting its operation remains in effect. Any person found to be an habitual offender under this chapter . . . who is thereafter convicted of operating a motor vehicle in this State while the revocation prohibiting operation is in effect shall have committed a Class C crime.
>
> * * *
>
> If the name and date of birth of the person being prosecuted under this section are the same as the habitual offender whose privilege to operate has been revoked, then there shall be a presumption that that person is the same person whose license was revoked under this chapter.

Statement of the Case.

Appellant was indicted on the Class C felony of Operating After Having Been Declared an Habitual Offender under 29 M.R.S.A. § 2298.

Following selection of a jury on November 17, 1987, the State, for the first time, moved to exclude all evidence on the correctness of the Secretary of State's designation of the Defendant as an Habitual Offender (Appendix B, p. 6a). Caught by surprise, Appellant argued against the motion raising fundamental values protected by the Due Process Clause, including: the right to a jury trial; the presumption of his innocence; and the requirement of proof beyond a reasonable doubt as to all elements of the offense charged. As argued by Appellant's counsel at trial:

> We're raising a question of fact. This is the quintessential province of the jury in this case, and it is their duty to determine the facts of whether a crime occurred.
>
> It's our position that what the State is attempting to do here is take the case away from the jury entirely and that it's absolutely not possible under the law that — that the acts of the Secretary of State declaring him an habitual offender couldn't be questioned.
>
> They are in question. They will be questioned. That's how I'm going to prove my client is innocent."

These fundamental values and notions of fair play are protected by the Fifth Amendment Due Process Clause and the Sixth Amendment Confrontation Clause.

The Oxford Superior Court granted the State's Motion In Limine and, thus prevented Appellant from proving facts material

to his defense. Appellant made an offer of proof. (The most important documents offered appear in Appendix E, p. 20a.)

During the brief trial, Appellant attempted to cross-examine the arresting officer with respect to the correctness of his computer license check. The Court sustained the State's objection to this line of examination. The State offered no witness to prove the validity of Appellant's alleged Habitual Offender status. Instead, the State, pursuant to 29 M.R.S.A. § 58, offered an unreliable hearsay statement to prove Habitual Offender status. Further, the State failed to prove that Appellant had any actual notice of his purported designation as an Habitual Offender.

Appellant moved for judgment of acquittal, citing lack of evidence of correct Habitual Offender status and of actual notice to defendant. His motion was denied.

Appellant tried to confront and cross-examine the Maine Secretary of State. Because the Secretary of State was then hospitalized and unavailable, Appellant subpoenaed the Secretary's Deputy and his Chief Hearing Examiner. He sought to show their lack of authority to claim that he was under suspension on March 25, 1986 with respect to an underlying misdemeanor conviction for Operating After Suspension because public records declared that his license was restored on the very date. St. Hilaire had no counsel on that charge. He also offered public records showing that he had paid a license reinstatement fee five days earlier. Consequently, the underlying misdemeanor resulted from bureaucratic delay and computer error. All Appellant's evidence was excluded.

In his brief on appeal to the Maine Supreme Judicial Court (Appendix F, p. 24a), Appellant raised explicit challenges to both statutes under the United States Constitution. Also, he argued that he had no opportunity to challenge the correctness of the Secretary's label because the only issue on administrative appeal is his identity. 29 M.R.S.A. § 2294. The Maine Su-

preme Judicial Court rejected all his arguments treating only some explicitly.

Question I Is Substantial.

A. The Maine Habitual Offender Penalty, 29 M.R.S.A. Section 2298, as Interpreted and Applied by the Maine Supreme Judicial Court, Violates Due Process and the Violation Should be Corrected.

As interpreted by the Maine Supreme Judicial Court, the Maine Habitual Offender Statute permits conviction of a felony offense by computer or by a bureaucrat without consideration of the facts by the jury. By interpreting the felony to apply regardless of actual notice to the accused and regardless of whether the status upon which it is based is correct, and by prohibiting an accused's inquiry into those facts, the Court has construed the crime to exist upon mere proof as to the identity of the accused. The Statute and its interpretation exceed constitutional limits addressed by the Supreme Court when it said:

> "'[I]t is not within the province of a legislature to declare an individual guilty or presumptively guilty of a crime.' *McFarland* v. *American Sugar Rfg. Co.*, 241 U.S. 79, 86, 36 S.Ct. 498, 500, 60 L.Ed. 899 (1916). The legislature cannot 'validly command that the finding of indictment, or mere proof of the identity of the accused, should create a presumption of the existence of all the facts essential to guilt.' *Tot* v. *United States*, 319 U.S. 463, 469, 63 S.Ct. 1241, 1246, 87 L.Ed. 1519 (1943). *See also Speiser* v. *Randall*, 357 U.S., at 523-525, 78 S.Ct., at 1340-

> 1341; *Morrison* v. *California*, 291 U.S. 82, 54 S.Ct. 281, 78 L.Ed. 664 (1934), also makes the point with sufficient clarity."

Patterson v. *New York*, 432 U.S. 197, 210 (1977). The current definition of the crime reduces and eliminates the prosecution's burden of proof to the detriment of the Defendant who may be innocently mislabelled an habitual offender and who may be unaware he has been so designated. That definition unhinges the presumption of innocence in violation of Due Process. *Id.* nn. 12, 13.

The elements of notice and of the correctness of the designation must be pleaded and proved by the State under the Due Process Clause. *In re Winship*, 397 U.S. 358 (1970); *Mullaney* v. *Wilbur*, 421 U.S. 684 (1975); *Patterson* v. *New York*, *supra*; *Martin* v. *Ohio*, 480 U.S. 228 (1987); *United States* v. *King*, 587 F.2d 956 (9th Cir. 1978). At the very least, if a crime may be proved without proof that an underlying status is correct, actual notice or some *mens rea* must exist. *See Lewis* v. *United States*, 445 U.S. 55 (1980). Without proof of actual notice of an incorrect designation, an accused has no means to correct the label. Therefore, both elements may not be eliminated without offending fundamental fairness guaranteed by the Due Process Clause. Nevertheless, the Maine Supreme Judicial Court stated that:

> The correctness of this designation is not in issue. Neither does the statute require the State to prove St. Hilaire received actual notice of the designation. 29 M.R.S.A. Section 2298.

Although the Maine Court recites that Appellant does not dispute his habitual offender status on the date January 1, 1987,

he most certainly does. Appellant further asserts that he challenged the designation applied, but the statutes deny him a fundamental right to correct that label. An administrative appeal includes only the issue of the identity of the accused, not the propriety of the designation. 29 M.R.S.A. § 2294. The Maine Supreme Judicial Court ignored this deprivation of due process and construed the felony to exist without any avenue to correct or challenge the label.

The Maine Supreme Judicial Court has gone beyond constitutional bounds by prohibiting an accused from admitting at trial any evidence that the designation is incorrect, thereby creating a substantial risk that innocent persons will be convicted. "Few rights are more fundamental than that of an accused to present witnesses in his own defense." *Chambers* v. *Mississippi*, 410 U.S. 284, 302 (1973). The exclusion "offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Speiser* v. *Randall*, 357 U.S. 513, 523 (1958). The interpretation is a profound dilution of the presumption of innocence and directly contrary to this Court's teaching. The interpretation subverts a fundamental value of our society that "it is far worse to convict an innocent man than to let a guilty man go free." *In re Winship, supra* at 372 (Harlan, J., concurring). Any individual operating a motor vehicle on a public way in the State of Maine is susceptible to conviction under this statute because he need not be notified of the habitual offender designation and the designation may be incorrect.

B. The Maine Habitual Offender Statute Infringes Upon Appellant's Sixth Amendment Right to Counsel Which Should Be Corrected by This Court.

In this case, Appellant suffered an uncounseled conviction, although he thought he had pleaded innocent. The use of a prior

criminal conviction that is constitutionally unfirm is inherently prejudicial. *Burgett* v. *Texas,* 389 U.S. 109 (1967). Here, it was particularly unreliable because official records showed Appellant's license to be restored on the very date that he was convicted of being under suspension, March 25, 1986. The unreliability of that past, uncounseled conviction prohibited its use because it is a violation of the Sixth Amendment right to counsel. *Id.*; *Baldasar* v. *Illinois,* 446 U.S. 222 (1980); *United States* v. *Tucker,* 404 U.S. 443 (1972); *Loper* v. *Beto,* 405 U.S. 473 (1972).

In addition, without proof that Appellant's statements were intelligently and knowingly made with regard to the entry of the guilty plea, the use of the prior uncounseled misdemeanor plea is equivalent to the use of a statement against Appellant in violation of his Fifth Amendment right against self-incrimination. *Miranda* v. *Arizona,* 384 U.S. 436 (1966).

Unlike some uses of prior uncounseled convictions approved by this Court, the use of the challenged misdemeanor conviction in this case occurred without proof of notice to the accused in violation of Appellant's Sixth Amendment right to counsel. *See Lewis* v. *United States,* 445 U.S. 55 (1980). In further contrast, the unreliable, uncounseled prior misdemeanor conviction was used in this case to prove a more severe crime, a felony, while the use approved by this Court has been that of a felony conviction with respect to a subsequent misdemeanor. *Id.*

The above violations of the Fifth and Sixth Amendment raise substantial federal questions that should be addressed by this Court to protect every operator of a motor vehicle on a public way in Maine.

Question II Is Substantial.

A. The Maine Statute 29 M.R.S.A. Section 58 Violates Appellant's Sixth Amendment Confrontation Clause Rights and Will So Continue Against Others Accused Until Correction by This Court.

The procedure used against Appellant to prove the felony charged violated his Sixth Amendment right to confront and cross-examine the witnesses against him and his Fifth Amendment due process rights to be free of conclusive presumptions. In a decision of this Court one day prior to that of the Maine Supreme Judicial Court, this Court upheld the Sixth Amendment right of the accused to confront his accuser face to face. *Coy* v. *Iowa*, 56 U.S.L.W. 4931 (U.S. June 29, 1988). The history and significance of the right to see and be seen by one's accuser and to have the jury assess every detail of that face-to-face confrontation were well described in *Coy*. In this case, the absence of that confrontation and the substitution of an official looking paper bearing the Seal of the State of Maine may have given the jury the impression of guilt, thereby eroding the presumption of innocence. Moreover, Appellant sought to confront the Secretary of State on his authority to declare Appellant under license suspension on the same date that his license was restored. Appellant raised these rights before the Maine Supreme Judicial Court. As the certificate in question constituted the only proof of an element of the offense charged, the Confrontation Clause error was harmful. *Chapman* v. *California*, 386 U.S. 18 (1967); *Delaware* v. *Van Arsdall*, 475 U.S. 673 (1986).

The Confrontation Clause also provides the right to cross-examine adverse witnesses. *Chambers* v. *Mississippi*, 410 U.S. 284 (1973); *Davis* v. *Alaska*, 415 U.S. 308 (1974); *District of Columbia* v. *Clawans*, 300 U.S. 617 (1937). Appellant

sought to cross-examine the Secretary on the computer error or bureaucratic delay causing the underlying misdemeanor conviction and resulting habitual offender designation. No witness has a right to protection from being discredited on cross-examination. Any accused who may be deprived of his liberty is entitled to "his day in court, including at a minimum the right to examine witnesses, offer testimony, and be represented by counsel." *Argersinger* v. *Hamlin*, 407 U.S. 25 (1972). That fundamental right of cross-examination was clarified by the Supreme Court long before the Court clarified the meaning of the right to counsel. *Id.* Further, it is of wider scope than the right to trial by jury, because it applies even to petty offenses in which the right to trial by jury and the right to counsel may be absent. *District of Columbia* v. *Clawans, supra.*

The exclusion of Appellant's evidence ordered by the Oxford Superior Court and affirmed by the Maine Supreme Judicial Court, prevented Appellant from cross-examining the Deputy Secretary of State and his Chief Hearing Examiner. Appellant himself had subpoenaed these witnesses. The exclusionary ruling violated both his right to cross-examine and his right to present witnesses in his own defense. As noted above, the appellate rights provided by statute following designation as an Habitual Offender do not address the means of notice or the correctness of the label and place the burden of proof upon a petitioner. 29 M.R.S.A. § 2294. Hence, Appellant had no right of confrontation in any other forum. He was consequently denied trial in accord with traditional and fundamental standards of due process and in violation of the Sixth Amendment. *Chambers* v. *Mississippi, supra.*

B. THE PROCEDURAL STATUTE 29 M.R.S.A. SECTION 58 ESTABLISHES A CONCLUSIVE PRESUMPTION AGAINST APPELLANT VIOLATING DUE PROCESS AND WILL SO CONTINUE UNTIL CORRECTED BY THIS COURT.

The State's use of an incorrect hearsay certificate of the Secretary of State, and the exclusion of Appellant's evidence in rebuttal and in defense, created a conclusive presumption against him in violation of his Fifth Amendment due process rights. Appellant unsuccessfully raised these rights before the Maine Supreme Judicial Court. The use of that conclusive presumption violates Due Process. *In re Winship, supra*; *Mullaney* v. *Wilbur, supra*; *Patterson* v. *New York, supra*; *Martin* v. *Ohio, supra*. The presumption established by 29 M.R.S.A. § 58 exposes all motor vehicle operators in Maine to criminal conviction based upon violations of constitutionally protected procedural rights. Only this Court can correct the current situation. The Maine courts and the Maine Legislature need guidance from this Court on the constitutional limits of Maine's current criminal justice procedures in Habitual Offender cases.

Conclusion.

Probable Jurisdiction of the Appeal should be noted, or in the alternative, this Appeal treated as an Application for a Writ of Certiorari pursuant to 28 U.S.C. § 2103.

Respectfully submitted,

NERIA R. DOUGLASS,
ELLIOTT L. EPSTEIN,
ISAACSON & RAYMOND,
75 Park Street,
P.O. Box 891,
Lewiston, Maine 04243-0891.
(207) 795-5000
Counsel for Appellant

July 29, 1988

Appendix.

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Appendix A.

MAINE SUPREME JUDICIAL COURT

Reporter of Decisions
Decision No. 4799
Law Docket No. Oxf-87-506

STATE OF MAINE

v.

JEFFREY ST. HILAIRE

Argued May 4, 1988
Decided June 30, 1988

Before McKUSICK, C.J., ROBERTS, WATHEN, GLASSMAN and SCOLNIK, JJ.

ROBERTS, J.

Jeffrey St. Hilaire appeals from a judgment of the Superior Court, Oxford County, entered on a jury verdict finding St. Hilaire guilty of operating a motor vehicle while an habitual offender, 29 M.R.S.A. § 2298 (Supp. 1987) (Class C).[1] St. Hilaire challenges the court's exclusion of evidence and claims the indictment is void. In addition, St. Hilaire challenges the sufficiency of the evidence to support the verdict of the jury. Because these claims are without merit, we affirm the judgment.

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[1] Section 2298 provides, in relevant part:

It shall be unlawful for any person to operate any motor vehicle on a public way . . . in this State while the revocation prohibiting its operation remains in effect. Any person found to be an habitual offender . . . who is thereafter convicted of operating a motor vehicle in this State while the revocation prohibiting operation is in effect shall have committed a Class C crime.

On January 1, 1987, a state police officer stopped St. Hilaire for speeding on Route 5 in Fryeburg. The officer's license check revealed that St. Hilaire was under habitual offender status at the time of the stop. A certified copy of St. Hilaire's license record from the Secretary of State verified St. Hilaire's habitual offender status as of January 1, 1987. St. Hilaire does not dispute these facts established at trial.

On motion by the State, the Superior Court excluded the following evidence concerning the offenses underlying St. Hilaire's habitual offender designation and his attempts, initiated after indictment in the instant case, to have his habitual offender designation vacated. As a result of repeat violations, St. Hilaire's license was suspended effective December 2, 1985. On March 20, 1986, after the fixed suspension period had expired, St. Hilaire paid the reinstatement fee. St. Hilaire was stopped on March 25, 1986 and a license check disclosed that his license was still under suspension. As a result of this stop, St. Hilaire was convicted on an uncounseled guilty plea for operating after suspension, 29 M.R.S.A. § 2184 (Supp. 1987) (OAS). St. Hilaire paid the $50 fine imposed by the court.

In July 1986, the Secretary of State notified St. Hilaire that as a result of the OAS and two prior convictions, he had been designated an habitual offender.[2] St. Hilaire did not request an administrative hearing to review the action of the Secretary of State.

On January 1, 1987, when St. Hilaire was stopped for speeding, he was under habitual offender status due to the unchallenged July 1986 designation. After his indictment in the instant

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[2] An habitual offender is any person whose record, as maintained by the Secretary of State, shows that the person has accumulated three or more convictions or adjudications within a five year period for the offenses set out in 29 M.R.S.A. § 2292 (Supp. 1987). *State* v. *O'Neill*, 473 A.2d 415, 417 (Me. 1984).

case, St. Hilaire commenced a series of actions challenging his July 1986 habitual offender designation and the underlying OAS conviction. His March 1987 request for an administrative hearing to review the designation was denied by the Secretary of State as untimely.[3] However, St. Hilaire's motion to vacate the OAS conviction was granted by the District Court (Lewiston) on May 29, 1987.[4] The Secretary of State subsequently vacated St. Hilaire's habitual offender designation and removed the OAS conviction from its records.

In this appeal, St. Hilaire contends that the Superior Court erred in granting the State's motion in limine excluding the evidence pertaining to the correctness of the Secretary of State's designation of St. Hilaire as an habitual offender. We disagree. The only issue in this litigation is St. Hilaire's status at the time of operation on January 1, 1987. The State need only prove that St. Hilaire was subject to a "then-effective order" under the habitual offender statute. *State* v. *Vosmus*, 431 A.2d 621, 623 (Me. 1981). On January 1, 1987, St. Hilaire was subject to an unchallenged order of the Secretary of State that classified him as an habitual offender. All the evidence St. Hilaire sought to admit at trial goes to St. Hilaire's status after March 1987, and was properly excluded as irrelevant.

St. Hilaire also contends that the indictment in the instant case is void. He charges that the indictment impermissibly

---

[3] Clearly, St. Hilaire's March 1987 request for an administrative hearing of the July 1986 designation is untimely pursuant to 29 M.R.S.A. § 2294(1) (Supp. 1987), which allows 30 days to challenge the action of the Secretary of State. Nevertheless, St. Hilaire has appealed the denial pursuant to M.R. Civ. P. 80C. The action has been stayed pending the outcome of the instant appeal.

[4] St. Hilaire was not entitled to vacation of the conviction after he paid the fine imposed by the court. *Cf. State* v. *Haskell*, 492 A.2d 1265, 1266 (Me. 1985); *State* v. *Lewis*, 406 A.2d 886, 888 (Me. 1979) (voluntary payment of a fine terminates the action and leaves nothing upon which an appeal might operate.) The State, however, did not oppose the motion and subsequently dismissed the OAS complaint.

recites, for the purpose of sentence enhancement, an offense for which St. Hilaire was not represented by counsel and that the indictment fails to allege that the Secretary of State's action was legally correct. Even if St. Hilaire's arguments had merit,[5] he cannot raise them in the instant appeal. His attempt to do so amounts to an impermissible attempt to relitigate the Secretary of State's designation and the underlying OAS conviction. Because St. Hilaire failed to pursue his statutory right to a hearing on the Secretary of State's action, he allowed that decision to become final. He cannot now challenge his original designation as an habitual offender in this appeal from the judgment of conviction for operating while an habitual offender. *Maines* v. *Secretary of State*, 493 A.2d 326 (Me.), *cert. denied*, 474 U.S. 947 (1985); *Piacitelli* v. *Quinn*, 449 A.2d 1126 (Me. 1982); *State* v. *Albert*, 418 A.2d at 191-92.

St. Hilaire's contention that his OAS conviction is void "*ab initio*" and thus improperly used to establish his habitual offender status must be rejected on the same grounds. *Id. See also State* v. *Higgins*, 338 A.2d 159 (Me. 1975) (In appeal from judgment of conviction for OAS, Court refused to allow defendant to contest the constitutionality of statutory provisions pursuant to which his license was initially suspended).

Finally, St. Hilaire challenges the sufficiency of the evidence to support the verdict of the jury. In order to convict St. Hilaire, the State was required to prove, beyond a reasonable doubt, that St. Hilaire "operate[d] [a] motor vehicle on a public way . . .

---

[5] *See State* v. *O'Neill*, 473 A.2d at 417-19 (Use of uncounseled OUI conviction as basis in part for reclassification as habitual offender; reclassification may be predicate for imposition of imprisonment upon conviction of operating while an habitual offender). *See also Lewis* v. *United States*, 445 U.S. 55, 66-67 (1980) (Uncounseled conviction is not invalid for all purposes); *State* v. *Albert*, 418 A.2d 190, 191 (Me. 1980). The indictment need not allege that the Secretary of State's designation is legally correct because the correctness of the designation is not an essential element of the offense. *See State* v. *O'Neill*, 473 A.2d at 419 (The focus is not on the reliability of the underlying conviction, but on the "mere fact" of conviction or adjudication of habitual offender status).

while the revocation prohibiting its operation remain[ed] in effect." 29 M.R.S.A. § 2298. St. Hilaire does not dispute the fact that he was operating a motor vehicle on a public way. Rather, St. Hilaire contends that the State should be required to prove, as part of its case in chief, that he was properly declared an habitual offender, and that he received actual notice of his habitual offender designation.

The State need only prove that at the time of operation, St. Hilaire was subject to a "then-effective" order under the habitual offender statute. *State* v. *Vosmus*, 431 A.2d at 623. The evidence clearly shows that at the time of the stop, the records of the Secretary of State classified St. Hilaire as an habitual offender. The correctness of this designation is not in issue. Neither does the statute require the State to prove St. Hilaire received actual notice of the designation. 29 M.R.S.A. § 2298. *Cf. State* v. *Kovtuschenko*, 521 A.2d 718, 719 (Me. 1987) (Statute prohibiting operation after license is suspended, 29 M.R.S.A. § 2184 (Supp. 1987), which requires written notice, but not actual notice of suspension, does not violate due process). Our review of the record discloses sufficient evidence for the jury rationally to have found, beyond a reasonable doubt, the elements of the offense charged. *State* v. *Barry*, 495 A.2d 825, 826 (Me. 1985).

The entry is:

Judgment affirmed.

All concurring.

Attorneys for the State:
Janet T. Mills, Esq.
District Attorney
Patricia A. Mador, Esq. (orally)
Assistant District Attorney
Oxford County Courthouse
South Paris, Maine 04281

Attorney for Defendant:
Neria R. Douglass, Esq. (orally)
MARSHALL, RAYMOND & BONNEAU
75 Park Street
P.O. Box 60
Lewiston, Maine 04240

NOTICE: This opinion is subject to formal revision before publication in the Maine Reporter. Readers are requested to notify the Reporter of Decisions, Box 368, Portland, Me. 04112, of any typographical or other formal errors before the opinion goes to press.

Appendix B.

STATE OF MAINE OXFORD, SS.	SUPERIOR COURT CRIMINAL ACTION DOCKET NO. CR 87-51

STATE OF MAINE	*	
	*	
VS.	*	MOTION IN LIMINE
	*	
JEFFREY ST. HILAIRE	*	

Now comes the State of Maine and moves this court *in limine* to exclude testimony on the issue of whether or not the Secretary of State acted properly in declaring the defendant an Habitual Offender, for the following reasons:

1. The defendant cannot in the pending prosecution for driving after having been declared a Habitual Offender avoid conviction by leveling a collateral attack against the action of the Secretary of State as taken in a separate proceeding. *State* v. *Higgins*, 338 A.2d 159 (Me. 1975), *State* v. *Albert*, 418 A.2d 190 (Me. 1980); *Piacitelli* v. *Quinn*, 449 A.2d 1126 (Me. 1982); *State* v. *O'Neill*, 473 A.2d 415 (Me. 1984) and *Maines* v. *Secretary of State*, 493 A.2d 326 (Me. 1985).

2. This issue had been raised by the defendant in a prior Motion to Quash the Indictment, which was denied.

Wherefore, the State respectfully requests the testimony be excluded, and that the issues be limited to (1) was the defendant

operating a motor vehicle and (2) was the defendant a Habitual Offender.

Dated: November 17, 1987

Patricia A. Mador
Assistant District Attorney

ORDER

The above motion is hereby (granted) (denied).
Dated: November 17, 1987

Justice, Superior Court

Appendix C.

STATE OF MAINE	SUPERIOR COURT CRIMINAL ACTION
OXFORD, ss.	Docket No. CR-87-51 Law Docket No. OXF-87-506

STATE OF MAINE,)
)
Plaintiff)
)
vs)
)
JEFFREY ST. HILAIRE,)
)
Defendant)

TRIAL PROCEEDINGS
(with jury)

BEFORE:
HONORABLE PAUL A. FRITZSCHE, JUSTICE OF THE SUPERIOR COURT

Oxford County Courthouse
South Paris, Maine

November 17, 1987
1:21 p.m.

APPEARANCES:

For the Plaintiff: PATRICIA A. MADOR, Esq.
For the Defendant: NERIA R. DOUGLASS, Esq.

Penny L. Philbrick
Official Court Reporter

[2]

Transcript of Proceedings

(This trial came on for hearing before the Honorable Paul A. Fritzsche, Justice, and a jury impaneled, accepted and sworn, at the Oxford County Courthouse, South Paris, Maine, on Tuesday, November 17, 1987, commencing at 1:21 p.m.)

THE COURT: We have, I believe, two matters that I'm aware of to discuss before the case begins.

The first is a motion *in limine*, which just simply means a motion before a case begins, of the State which seeks to limit the issues and exclude any evidence surrounding how it was that Mr. St. Hilaire obtained the habitual offender status.

And like to ask, Ms. Douglass, if you have any argument other than that which you submitted in your motion to quash the indictment or dismiss the indictment?

MS. DOUGLASS: Well, Judge, I'm not sure that I've reviewed that — that argument in full detail so I guess I do have to put on the record that each of these cases is distinguishable from the issue in this case because all the cases cited pertain to procedural due process issues that were [3] raised by Defendants, some of them even at the appeal stage rather than at the trial.

We're raising a question of fact. This is the quintessential province of the jury in this case, and it is their duty to determine the facts of whether a crime occurred.

It's our position that what the State is attempting to do here is take the case away from the jury entirely and that it's absolutely not possible under the law that — that the acts of the Secretary of State declaring him an habitual offender couldn't be questioned.

They are in question. They will be questioned. That's how I'm going to prove my client is innocent.

THE COURT: So if I understand correctly, there is no question Mr. St. Hilaire was operating? There's no question he was operating on a public way on the first of the year in Fryeburg?

The question becomes: Was he an habitual offender at that time? And you would say that even though he was on — at least on paper an habitual offender at that time and may or may not have known that but certainly was on paper an habitual offender, he — that was an improper designation because some five or so months later the District Court vacated **[4]** one of the three convictions which were necessary to obtain the habitual offender status, that being the final one, operating after suspension; so, therefore, even if Mr. St. Hilaire did not know that he was not an habitual offender — in other words, even if he thought he was an habitual offender — then he gets the benefit of finding out later that that was an incorrect designation?

MS. DOUGLASS: My position is that at the time, there'll be no issue about his operation, about his being on the public way. The issue in this case is going to be whether he was ever guilty of the operating after suspension that put him into this habitual offender category.

It is not as a matter of the vacating of that judgment that we raise this issue but as a matter of the facts that put him into the classification as being an habitual offender and our argument is that those facts existed on March 25, 1986 and are at issue in this case because those facts determine whether or not he is an habitual offender and when he was operating on the 1st of January in 1987, he was innocent because the designation of habitual offender, of which we were going to contest notice to some extent at any rate, was not correct.

[5] That designation as habitual offender is the essence of our — the jury's determination in our trial.

THE COURT: So you would say that — did Mr. St. Hilaire or did Mr. St. Hilaire not know on January 1 that the Secretary of State thought him to be an habitual offender?

MS. DOUGLASS: No. My position is the issue is whether he was, in fact, a habitual offender on January 1, 1987.

It's our position that he was not, regardless of what the State told him.

* * *

(Portions deleted.)

[9] They have to prove it, and I think it's completely up to them to prove it beyond a reasonable doubt.

I think it's — first, I think it's very doubtful that he should have been declared habitual offender and secondly, that's — that's exactly the status that the State has to prove and if — if **[10]** we're not permitted to enter evidence on it, I think then this is just a mockery of justice.

* * *

(Portions deleted.)

[12] THE COURT: Any rebuttal, Miss Douglass?

MS. DOUGLASS: Yes, Your Honor. This is the proper forum. This is a felony trial. The State has overcharged in this case. That's their right to do, and they're not going to be able to prove it because he was not supposed to be declared an habitual offender.

That is the — that status is the essence of this trial and if we're — and she admits that's the second issue. She says the first is operation, and the second is whether there was declared an habitual offender.

That very determination has to be raised in this — in this trial.

Secondly, the law of the case is simply that Judge Delahanty decided there wasn't any summary judgment procedure for a Defendant. I — that's all that was decided then.

He certainly didn't make any evidentiary **[13]** decisions as to what should go into the trial and that's what you're faced with and, you know, I guess this — this case offends me.

I feel somewhat — so strongly about it that I — I'm tempted to make this — in a russh I make statements like that, but the bureaucrats in the administrative law that we live by with regard to our license status doesn't put us in jail.

This young man should'nt be convicted of a crime because of errors that were made at the Secretary of State's office and I think we have to be permitted to present that evidence or — or our system of innocence until proven guilty doesn't mean anything.

THE COURT: Well —

MS. DOUGLASS: I might note I was trying to find — you see, this case has resulted in several different cases because we've attempted to pursue our administrative appeal and, of course, that was denied on the basis that even though we found new evidence in the Secretary of State's files, they wouldn't give us a hearing, which is again another problem that many people have with administrative law that doesn't exist in our court system because we have the possibility of reopening **[14]** a judgment, Rule 59, motion 60(B), and that is an avenue that we aren't pursuing now; however, those are civil matters.

This is a criminal matter in which his criminal record, his — his innocence as a citizen of the State is at stake.

One of those cases suggests that they — and I think it's State v Albert — but that they're not giving any opinion on every single case as to collateral attacks but that it was the decision in that case and I think that shows that this is a case by case determination and what I submit the law — the state of the law now shows to the Court is that if the Defendant is

raising a procedural problem, that may not be law enough to warrant a reversal of a conviction.

However, first of all, those decisions do not turn on evidentiary rulings. Clearly the evidence in those cases went in.

Second, we're raising a factual issue, not a procedural issue. The State would like it to be a procedural issue and would like to cut off our rights to appeal but I submit that's not the — that may be what happens in administrative law, but that's not what happens in the judicial system.

[15] THE COURT: On the — on the motion *in limine*, I'm — I'm not going to decide that based on what Justice Delahanty did because, in part, I don't know the reasons for his ruling. All I know is what his ruling was.

I do know that many of the same issues were raised. There's a slightly different contention but I suspect the argument was reasonably similar.

Many of the cases that were cited were the same cases so there is a — a close connection between what he was confronted with and what I am but I'm not going to base my decision on his ruling because I don't know the reason for it.

The harder question becomes the cases like Maines versus the Secretary of State, which say, Forget about the older distinctions of void and voidable, collateral and direct attack. Turn instead to another Latin phrase called *res judicata*.

At least in that case, which involved a challenge to the teen drinking law, the Maine Supreme Court said, You've got your notice of suspension. You didn't do anything. You're under suspension. Don't go to court under a separate procedure later to challenge that.

As best I can tell, what we're here on, **[16]** presumably at least in part on undisputeed facts, is that in December of 1985, Mr. St. Hilaire was suspended for a number of violations for at least 15 days.

On the 17th, he was apparently eligible for — became eligible to have his license reinstated. He did that on — he paid a reinstatement fee on March 20 of 1986.

On March 25, he was charged with operating after suspension, was convicted of that on April 16. While that judgment has since been vacated, there was apparently no appeal taken at that time from the District Court decision.

On July 31, 1986, his rights to operate were revoked as an habitual offender and presumably he received notice.

He may or may not have had the financial resources to do anything about it; but in any event, he received notice that he could appeal that within 30 days. Apparently he didn't, kept on driving, and got picked up on the 1st of January for operating as an habitual offender.

Then by May the 3rd, serious offense which would constitute the offense of op — of habitual offender was vacated or voided when Judge Scales **[17]** in the District Court voided the operating after suspension conviction thus bringing him down to only two serious offenses rather than the requisite three for habitual offender status.

So there are a couple of questions. One, under Maines versus Secretary of State, is it just too bad for Mr. St. Hilaire he got his notice, he kept on driving, and he had his chance to challenge it and he didn't; and while I could consider that as a factor in sentencing if I wanted to, if and when there was a conviction, that wouldn't affect the trial itself?

The second one becomes a question of the — the fairness of this proceeding and the justness of it of someone who, perhaps after the fact, really only has two/thirds of what he needs to be an habitual offender and not the full amount and I'm — I'm not so offended by that when it appears that an individual knows that the State at the time he's driving thinks he shouldn't be driving and the person is driving it anyway and only after he gets caught — and this isn't just the next day

but months and months pass and apparently keeps on driving — and then only after he getss charged with something does he try to poke into it and get it straightened out.

[18] I also realize that lawyers are expensive, that a number of these procedures are often difficult for the average person to understand and follow; but if I understand cases like Higgins and Maines versus the Secretary of State correctly, and I may or may not, it seems that the motion *in limine* has to be granted and that even if it is as Miss Douglass says, a severe miscarriage of justice, the issues in this case would tend to be more limited to: Was he operating a motor vehicle, was it on a public way, was it while the records of the Secretary of State indicated he was an habitual offender, and perhaps the only additional issue, perhaps of whether he had any notice of that.

But the question of challenging the habitual offender status and saying, Look, jurors, this isn't fair; we later found out that he had him under wrong status, I don't think that's proper.

As the record indicates, the Defendant disagrees with my ruling very strongly. That will be preserved for any appeal in the event that the jury verdict is unfavorable to Mr. St. Hilaire.

Obviously, if there is any sentence, we would obviously stay that sentence to give him time to appeal; but I think I do have to grant that motion **[19]** *in limine* as I understand the case law.

So the motion of the State is granted.

Appendix D.

STATE OF MAINE OXFORD, SS.	SUPREME JUDICIAL COURT SITTING AS THE LAW COURT LAW DOCKET NO. OXF-87-506

STATE OF MAINE, Appellee v. JEFFREY ST. HILAIRE, Appellant	)))))))))	NOTICE OF APPEAL TO THE UNITED STATES SUPREME COURT 28 U.S.C.S. SECTION 1257(2)

NOW COMES Jeffrey St. Hilaire and appeals from the Judgment of the Maine Supreme Judicial Court Sitting as the Law Court pursuant to 28 U.S.C.S. Section 1257(2) and Rule 10 of the Rules of the Supreme Court of the United States. Appellant complies with Rule 10 by stating the following:

1. The party taking this Appeal is Jeffrey St. Hilaire, Appellant before the Maine Supreme Judicial Court.

2. The Judgment appealed from is the Judgment of the Maine Supreme Judicial Court affirming a jury verdict finding St. Hilaire guilty of Operating a Motor Vehicle While an Habitual Offender, 29 M.R.S.A. Section 2298 (1987) (Class C), as set forth in its Opinion dated June 30, 1988.

3. The Judgment was entered June 30, 1988, Decision No. 4799.

4. The statutes under which appeal to the United States Supreme Court is taken are: a) 29 M.R.S.A. Sections 58 and; b) 29 M.R.S.A. Section 2298.

5. The questions presented by this appeal are:

a. Whether the Maine Habitual Offender Statute, 29 M.R.S.A. Section 2298 is unconstitutional as applied to St. Hilaire by denying him due process guaranteed in the Fifth Amendment to the U.S. Constitution;
b. Whether the absence of proof of actual notice of the Habitual Offender designation to Appellant violates due process guaranteed by the Fifth Amendment;
c. Whether the absence of proof of the correctness of the Habitual Offender designation violates due process guaranteed by the Fifth Amendment;
d. Whether 29 M.R.S.A. Section 58 is unconstitutional as applied because the State's use of a hearsay certificate of the Secretary of State to prove an essential element of crime charged violates Appellant's Sixth Amendment right to confront the witnesses against him;
e. Whether 29 M.R.S.A. Section 58 is unconstitutional as applied because the statutory presumption established by it, making a certificate of the Secretary of State *prima facie* proof of license status, whether before or after submission of rebuttal evidence by Appellant, violates Fifth Amendment due process; and
f. Whether 29 M.R.S.A. Section 2298 is unconstitutional because denial of Appellant's attempted cross-examination of the Secretary of State on the designation of Appellant as an Habitual Offender violates his Sixth Amendment right to confront witnesses against him;
g. Whether 29 M.R.S.A. Section 2298 is unconstitutional as applied because it is predicated upon an unreliable, uncounseled prior conviction in violation of Appellant's

Sixth Amendment right to counsel and Fifth Amendment due process.

Date: July 5, 1988

ELLIOTT L. EPSTEIN

NERIA R. DOUGLASS

Isaacson & Raymond
75 Park Street, P.O. Box 891
Lewiston, Maine 04243-0891

STATE OF MAINE
OXFORD, SS.

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
LAW DOCKET NO. OXF-87-506

STATE OF MAINE,)
)
Appellee)
) PROOF OF SERVICE
JEFFREY ST. HILAIRE,)
Appellant)

I, Elliot L. Epstein certify that I have served a copy of the Appellant's Notice of Appeal to the United States Supreme Court on the Attorney for the State by depositing the document in a United States Post Office mailbox, with first class postage prepaid, addressed to counsel of record at her post office address as follows:

Janet Mills, Esq.
District Attorney
Patricia Mador, Assistant District Attorney
26 Western Ave.
Oxford County Courthouse
So. Paris, Maine 04281

Date: July 5, 1988

ELLIOTT L. EPSTEIN

Isaacson & Raymond, P.A.
75 Park Street, P.O. Box 891
Lewiston, Maine 04243-0891

Appendix E.

Defendant's Exhibit 5

State of Maine

Department of State

I, the Secretary of State, of the State of Maine, certify that the paper to which this is attached, is a true copy from the records of this office.

In Testimony Whereof, I have caused the Great Seal of the State to be hereunto affixed. GIVEN under my hand at Augusta, this Twenty-four day of March in the year of our Lord one thousand nine hundred and eighty-seven.

Secretary of State

RECORD OF PAYMENTS RECEIVED 039559
MOTOR VEHICLE DIVISION

JEFFREY ST HILAIRE 03/20/86
RFD 1 BOX 24
AUBURN, ME 04210

DATE OF BIRTH: 02/07/64 S534

REINSTATEMENT FEE AMOUNT RECEIVED 25.00

RWY09:41 FIXED SUSPENSION: 12/17/85

State of Maine

Department of State
Motor Vehicle Division
Augusta, Maine 04333

03/25/86

JEFFREY ST. HILAIRE
RFD BOX 24
AUBURN, ME 04210

LICENSE NUMBER: 7613132 EXP: 89
DATE OF BIRTH: 02/07/64

1. YOUR PRIVILEGE TO OPERATE AND REGISTER MOTOR VEHICLES IN MAINE HAS BEEN RESTORED AS OF 03/25/86.

2. THE SUSPENSION(S) LISTED BELOW ARE NO LONGER IN EFFECT: 12/02/85 REPEAT VIOLATIONS

A. YOUR LICENSE WAS NEVER RECEIVED AT THIS OFFICE.

SN/07:48

Reply or questions
Should be addressed to: DRIVER IMPROVEMENT SECTION
Telephone: 207-289-3588

George E. Storer
Deputy Secretary of State

State of Maine

Department of State
Motor Vehicle Division
Augusta, Maine 04333

DRIVING RECORD REPORT-2

07/17/87

JEFFREY ST HILAIRE LICENSE NUMBER: 7613132 EXP:89
496 SABATTUS ST #1 DATE OF BIRTH: 02/07/64
LEWISTON, ME. 04240 LICENSE CLASS: 3 STATUS: S

DATE	DESCRIPTION	POINTS
02/26/86	IMPROPER PASSING (17568/D-LEWI) VIOLATION-DATE: 11/18/85	6
04/16/86	DEFENSIVE DRIVING COURSE COMPLETED	-5
06/18/86	EXCESSIVE NOISE (3748 /D-LEWI) VIOLATION-DATE: 03/29/86	
04/02/87	SPEEDING 59 MPH IN A 45 MPH ZONE (23 /D-BRID) VIOLATION-DATE: 01/01/87	4
07/11/87	SUSPENSION TO 09/09/87 - REPEAT VIOLATIONS (DMV SUSP)	
07/10/87	HEARING-CR EXCESS POINTS RESULTS PETITION DENIED	

* NO ACCIDENT RECORDS TOTAL POINTS 20

Appendix F.

STATEMENT OF ISSUES

I. WHETHER APPELLANT MUST BE ACQUITTED AS A MATTER OF LAW.

A. WHETHER THE INDICTMENT WAS VOID FOR FAILURE OF ANY CORPUS DELICTI.

B. WHETHER THE STATE'S USE OF AN INCORRECT, HEARSAY CERTIFICATE OF THE SECRETARY OF STATE IS INSUFFICIENT PROOF OF GUILT AS A MATTER OF LAW.

II. WHETHER EXCLUSION OF APPELLANT'S PROFFERED, RELEVANT EVIDENCE WAS MATERIAL, SUBSTANTIVE ERROR IN VIOLATION OF HIS CONSTITUTIONAL RIGHTS TO DUE PROCESS AND TO CONFRONT WITNESSES.

A. WHETHER DEFENDANT'S PROFFERED EVIDENCE WAS RELEVANT AND ADMISSIBLE.

B. WHETHER ANY AUTHORITY SUPPORTS THE EXCLUSIONARY RULING.

C. WHETHER THE EXCLUSION DENIED DEFENDANT DUE PROCESS AND THE RIGHT TO CONFRONT WITNESSES AGAINST HIM.

III. WHETHER THE VERDICT VIOLATES APPELLANT'S SUBSTANTIVE DUE PROCESS AND SIXTH AMENDMENT RIGHTS.

A. WHETHER THE PRIOR UNCOUNSELED CONVICTION WAS UNRELIABLE TO PROVE GUILT OR ENHANCED PUNISHMENT.

B. WHETHER THE THIRD CONVICTION USED TO ESTABLISH HABITUAL OFFENDER STATUS WAS NULL AB INITIO.

IV. WHETHER INSUFFICIENT PROOF OF APPELLANT'S RECEIPT OF NOTICE VIOLATES DUE PROCESS.

ARGUMENT
SUMMARY

The State of Maine had no authority to declare that the license of Jeffrey St. Hilaire to operate a motor vehicle was under suspension on March 25, 1986. Lacking such authority, all acts of the State of Maine based upon that unauthorized assertion are null and void. The uncontroverted facts show, and the records of the Secretary of State confirm, that Jeffrey St. Hilaire had a license on March 25, 1986 that was restored by his payment of a reinstatement fee on March 20, 1986 following a brief suspension.

The facts, including correction of Jeffrey St. Hilaire's license record, show that Appellant was not and is not an Habitual Offender. Accordingly, no *corpus delicti* for the crime charged in the instant appeal exists. The indictment was and is void because an essential element of the charge is lacking. Moreover, at the time of trial, no *corpus delicti* existed. The State's use of a self-authenticating, incorrect hearsay certificate cannot establish a *corpus*, and admission in evidence consti-

tuted material, substantive error. Jeffrey St. Hilaire must be acquitted of the charge here and discharged because the facts show clear and reasonable doubt as to his guilt.

The exclusion of Defendant's relevant evidence on the incorrect and unauthorized designation that he was under suspension, and consequently that he was an Habitual Offender, was material, substantive error. Defendant's evidence was relevant and admissible in defense of the charges at issue. The State raised no authority, annd the Court had no authority, for excluding that evidence under Maine Rules of Evidence, Maine Rules of Court or Maine statutory or case law. Exclusion of Defendant's factual evidence and restriction of his examination of State witnesses denied Appellant his constitutional rights: namely, due process under the Fifth Amendment and the right to confront the witnesses against him and to cross-examine them under the Six Amendment of the United States Constitution, as each is applied to the State through the Fourteenth Amendment.

Substantive due process required that Appellant have appointed counsel on the third offense on which the State relied in incorrectly classifying him as an Habitual Offender. Had counsel been appointed, the facts showing Appellant's innocence of that misdemeanor charge would surely have been uncovered and used to acquit him. That violation of substantive due process and the right to counsel as applied to this case prohibits use of Appellant's uncounseled guilty plea for any purpose at any time. Under standards of due process applied to the facts of this case, that uncounseled guilty plea was null *ab initio*. In the alternative, the later exoneration of Appellant, removal of the judgment of guilt and dismissal of those charges were retroactive. Accordingly, the designation of Jeffrey St. Hilaire as an Habitual Offender was void from the time it was made and so continues to the present.

Applied substantive due process and the right to counsel also prohibit enhancement of the offense charged, operating after license suspension, from a misdemeanor to a felony because that mandatory enhancement is based upon an unreliable prior uncounseled conviction. The application of constitutional due process principles to the facts in this case distinguish it from those civil and criminal cases in Maine making facial attacks on entire statutes for lack of procedural due process. The unreliability and the untruth of the prior uncounseled guilty plea removes this case from any likeness to the so-called "collateral attack" cases and make them completely inapposite. Moreover, those cases do not concern evidentiary rulings or exclusions nor do they warrant limitation of the factual defenses in this case. Rather, those cases support the reversal of this conviction on constitutional grounds.

Substantive due process further requires that Appellant receive notice of any designation as an Habitual Offender, which the State failed to prove. The Law Court should reconsider its rulings to the contrary.

For all the above reasons, the judgment of conviction must be reversed and the Appellant discharged.

(2)

Supreme Court, U.S.
FILED
OCT 7 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-228

In The
Supreme Court of the United States
October Term, 1988

JEFFREY ST. HILAIRE,
Appellant,

v.

STATE OF MAINE,
Appellee.

On Appeal from the Maine Supreme Judicial Court

MOTION OF APPELLEE TO DISMISS OR AFFIRM

JAMES E. TIERNEY
Attorney General
State of Maine

THOMAS D. WARREN
Deputy Attorney General
(Counsel of Record)

State House Station #6
Augusta, ME 04333
(207) 289-3661

Attorneys for Appellee

October 7, 1988

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
or call collect (402) 342-2831

QUESTIONS PRESENTED

1. Whether the constitutional claims advanced by Appellant were properly presented below.

2. Whether the State may constitutionally require that a driver whose license has been revoked as an habitual offender raise any challenges to that designation *before* getting behind the wheel in violation of the State's revocation order.

3. Whether Appellant has standing to argue that due process required that he receive actual notice of his designation as an habitual offender.

4. Whether the State may use means reasonably calculated to notify habitual offenders that their license has been revoked or whether the State must prove that such offenders received actual notice.

5. Whether an uncounseled prior misdemeanor conviction that did not result in incarceration may be used as a basis for the State's revocation of a motor vehicle operator's license.

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No. 88-228

In The

Supreme Court of the United States

October Term, 1988

JEFFREY ST. HILAIRE,

Appellant,

v.

STATE OF MAINE,

Appellee.

On Appeal from the Maine Supreme Judicial Court

MOTION OF APPELLEE TO DISMISS OR AFFIRM

Appellee State of Maine moves to dismiss this appeal or, in the alternative, to affirm the judgment of the Maine Supreme Judicial Court on the grounds that the issues raised by appellant were not properly presented below and that, in the alternative, the issues raised by appellant do not present substantial federal questions and do not warrant plenary review.

STATE STATUTES INVOLVED

This appeal primarily concerns certain provisions in the Maine Motor Vehicle Laws that are applicable to habitual offenders. 29 M.R.S.A. §§ 2291-99 (Supp. 1987). At the time relevant to this case, "Habitual offender" was defined in 29 M.R.S.A. § 2292 in pertinent part as follows:

> An habitual offender is any person, resident or nonresident, whose record, as maintained in the office of the Secretary of State shows that the person has accumulated convictions or adjudications for separate and distinct offenses described in subsection 1, 2 or 3, committed within a 5-year period, provided that, where more than one included offense is committed on the same day, multiple offenses shall be treated for purposes of this chapter as one offense:
>
> 1. *Three or more convictions.* Three or more convictions or adjudications, singularly or in combination, of any of the following separate and distinct offenses arising out of separate acts:
>
> A. Homicide resulting from operation of a motor vehicle;
>
> B. Operating or attempting to operate while under the influence of intoxicating liquor or drugs or with a blood alcohol level of 0.10% or more;
>
> C. Operating or attempting to operate a motor vehicle in a reckless manner or in such a manner as to endanger any person or property;
>
> D. Operating a motor vehicle when the operator's license, permit or privilege to operate a motor vehicle has been suspended or revoked;
>
> E. Operating a motor vehicle without a license to do so;

F. Knowingly making any false affidavit or swearing or affirming falsely to any manner or thing required by the motor vehicle laws or as to information required in the administration of these laws;

G. Commission of any offense punishable by a maximum term of imprisonment equal to or exceeding one year under the motor vehicle laws of Maine or any offense punishable by a maximum term of imprisonment equal to or exceeding one year in the commission of which a motor vehicle is used;

H. Failure of the driver of a motor vehicle involved in an accident resulting in the death or injury of any person to stop close to the scene of the accident and report his identity;

I. Failure of the driver of a motor vehicle involved in an accident resulting only in damage to an attended or unattended vehicle or other property to stop close to the scene of the accident and report his identity or otherwise report the accident;

J. Eluding an officer, as defined by section 2501-A, subsection 3; or

K. Passing a roadblock, as defined by section 2501-A, subsection 4.

2. Repealed. 1981, c. 679, § 50, eff. April 15, 1982.

3. Inclusions. The offenses included in subsection 1 shall be deemed to include offenses under any federal law, and law of another state or any valid town, city or county ordinance substantially conforming to the aforesaid state statutory provision.

Section 2293 provides that "[t]he Secretary of State shall revoke, without preliminary hearing, the license, permit, or privilege to operate a motor vehicle of any per-

son defined as an habitual offender as set forth in section 2292."

Section 2294 provides that any person whose license to operate has been revoked pursuant to section 2293 may request a hearing before the Secretary of State within 30 days. 29 M.R.S.A. § 2294(1) (Supp. 1987). The issues at such a hearing are whether the person whose license has been revoked is the same person named in the Secretary of State's transcript and whether that person's record brings him within the definition of an habitual offender. 29 M.R.S.A. § 2294(2) (Supp. 1987). A driver may thereafter seek judicial review by bringing a petition for review in the Maine Superior Court. 29 M.R.S.A. §§ 2242, 2297 (Supp. 1987).

A revocation under section 2293 is indefinite in duration, 29 M.R.S.A. § 2295 (Supp. 1987), but a driver may ordinarily petition for relief from designation as an habitual offender after one year. 29 M.R.S.A. § 2296 (Supp. 1987). However, the statute provides a specific penalty for anyone who is caught driving while his license has been revoked due to his designation as an habitual offender. Thus, 29 M.R.S.A. § 2298 (Supp. 1987) provides in pertinent part as follows:

> It shall be unlawful for any person to operate any motor vehicle on a public way, as defined in Title 17-A, section 505, subsection 2, in this State while the revocation prohibiting its operation remains in effect. Any person found to be an habitual offender under this chapter, or former chapter 18, who is thereafter convicted of operating a motor vehicle in this State while the revocation prohibiting operation is in effect shall have committed a Class C crime.

Under Maine law a Class C crime is punishable by a sentence of imprisonment not to exceed 5 years and is usually subject to a potential fine of up to $2,500. *See* 17-A M.R.S.A. §§ 1252(2)(C); 1301(1)(A-1) (1983). 29 M.R.S.A. § 2298, however, itself specifies a fine of up to $5,000. Moreover, a driver convicted of operating a motor vehicle while his license has been revoked as an habitual offender may not be granted relief from the revocation of his license for three additional years. *Id.*

The other statutory provision called into question by appellant is 29 M.R.S.A. § 58 (Supp. 1987), which provides:

> Notwithstanding any other provision of law or rule of evidence, the certificate of the Secretary of State or his deputy, under seal of the State, shall be received in any court in this State as prima facie evidence of any fact stated in the certificate or documents attached thereto.

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STATEMENT OF THE CASE

A. St. Hilaire's Status as of January 1, 1987.

On or about July 8, 1986 the Maine Secretary of State's office determined that appellant Jeffrey St. Hilaire was an habitual offender as defined in 29 M.R.S.A. § 2292 (1). Written notification of this determination[1] was

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[1]The Secretary's written notification of revocation due to St. Hilaire's designation as a habitual offender is reproduced in the Appendix to this Motion ("State's App.") at App. 3-4. This

(Continued on following page)

mailed to St. Hilaire no later than July 11, 1986, informing him in pertinent part as follows:

> This is to notify you that your driving record . . . has brought you within the statutory definition of an habitual offender, found in 29 M.R.S.A. Ch. 18-A. As a result of this, the Secretary of State is hereby notifying you that your motor vehicle operator's license and/or right to operate in the State of Maine is revoked for an indefinite period effective 7/21/86.

The Secretary's notice advised St. Hilaire that he had the opportunity to request a hearing within 30 days. It also stated that if St. Hilaire was convicted of operating a motor vehicle while this revocation was in effect, he would be "subject to penalties of up to $5,000 and/or 5 years imprisonment and an additional revocation period of up to 3 years." State's App. at App. 4.

The Secretary of State's finding that St. Hilaire was an habitual offender was based on three convictions that had occurred within the past five years. The first was his conviction on November 13, 1981 for operating without a license. The second was his conviction on February 29, 1984 for operating a motor vehicle with a blood alcohol content of at least .10 percent. The third was his conviction on April 16, 1986 for operating after suspension (OAS).[2]

(Continued from previous page)

document was not put in evidence at St. Hilaire's trial but was included among certain documents marked as Defendant's Ex. 2 and submitted to the trial court as part of an offer of proof made by counsel for defendant after the close of the evidence. See Trial Transcript of November 17, 1987 (hereafter "Tr.") at 59.

[2]Because this last conviction is the focus of most of St. Hilaire's arguments on appeal, it will be discussed further below.

The revocation of St. Hilaire's license became effective on July 21, 1986, and St. Hilaire did not request a hearing on the habitual offender designation within 30 days.

Less than six months later, on January 1, 1987, St. Hilaire was stopped for speeding on Route 5 in Fryeburg, Maine. He was unable to produce a driver's license. The arresting officer then reported St. Hilaire's name and date of birth to his dispatcher and learned that St. Hilaire's license had been revoked because he had been found an habitual offender. On February 13, 1987 St. Hilaire was indicted in the Maine Superior Court, Oxford County, for operating a motor vehicle after having been declared an habitual offender in violation of 29 M.R.S.A. § 2298.

B. Proceedings Below

In the trial court, St. Hilaire did not contest that he had been operating a motor vehicle on a public way on January 1, 1987. Moreover, although he argued that he had not understood that he had been declared to be an habitual offender, he did not contest that as of January 1, 1987, he at least understood that his license had been indefinitely suspended and that therefore he was not legally permitted to operate a vehicle on that date.[3]

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[3]See Tr. 5, 64 (State's App. at App. 9, 16-17). Because all the relevant portions of the November 17, 1987 transcript are not included in the Appendix to Appellant's Jurisdictional Statement (hereafter "J.S. App."), the State has included certain additional excerpts from the transcript in the Appendix to this Motion to Dismiss or Affirm. The Court may wish to examine the entire transcript and if there is any doubt as to what transpired below, we would invite it to do so.

St. Hilaire's primary defense consisted of a series of challenges to the validity of his April 16, 1986 conviction for operating after suspension—the last of the three convictions on which his habitual offender status was based. In March of 1987 he belatedly sought an administrative hearing to contest the Secretary of State's July 8, 1986 determination that he was an habitual offender. This was denied as untimely since his request was well beyond the 30 days time limit set forth in 29 M.R.S.A. § 2294(1). He then sought relief from the Maine District Court for the Division of Southern Androscoggin where his April 16, 1986 conviction for operating after suspension had been entered.[4] Although he had originally pled guilty to that infraction, he succeeded on May 29, 1987 in having the Maine District Court vacate his conviction and the guilty plea on which it was based.[5] St. Hilaire then moved to dismiss the indictment in the instant case on the ground that he was no longer an habitual offender as a matter of law. In response, the State argued that under Maine law St. Hilaire was not entitled to wait until after he had been caught behind the wheel to challenge one of the convictions upon which the revocation of his license had been

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[4]The Maine District Court is a trial court with jurisdiction over civil violations and Class D and Class E offenses that are heard without a jury. If a jury trial is requested or more serious offenses are involved, jurisdiction lies in the Maine Superior Court.

[5]The Maine Supreme Judicial Court later noted that since St. Hilaire had long since paid the fine imposed by the court, he was not entitled to have the conviction and the underlying plea vacated. *See* J.S. App. at 3a n.4. However, it observed that the District Attorney's office apparently had not opposed the motion and had subsequently dismissed the OAS complaint. *Id.*

based. The Superior Court denied St. Hilaire's motion to dismiss the indictment.

The trial was held on November 17, 1987. Aware that St. Hilaire intended to persist in his challenge to the habitual offender designation based on the alleged invalidity of his April 16, 1986 conviction, the State filed a motion in limine on the morning of trial. In its motion, the State sought to exclude evidence as to the alleged invalidity of the April 16, 1986 OAS conviction on the ground that St. Hilaire was not entitled to bring a collateral attack on the Secretary of State's finding that he was an habitual offender.[6]

After argument, the State's motion in limine was granted by the Superior Court. Counsel for St. Hilaire then made an offer of proof in which she summarized the evidence she would have proposed to offer in the absence of the Court's ruling. Most of this evidence related to the status of St. Hilaire's license on March 25, 1986, when he was arrested on the OAS charge. Specifically, counsel stated that she would submit records from the Department of Motor Vehicles showing (1) that St. Hilaire's reinstatement fee had been credited as of March 20, 1986; (2) that he was still under suspension at 6:05 a.m. on March 25 (when he was arrested); but (3) that the suspension had been lifted at 7:48 a.m. on March 25. The evidence she sought to elicit from the Deputy Secretary of State, George Storer, and his Chief Hearing Officer, Robert O'Connell, all related to this issue and to the subsequent

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[6]The motion in limine is reproduced in the State's App. at App. 1-2.

rejection of St. Hilaire's untimely request for an administrative hearing on the July 8, 1986 habitual offender finding. *See* Tr. 23-25, 27-30 (State's App. at App. 9-11, 11-13).

During her offer of proof, counsel for St. Hilaire also listed the following testimony that she would have elicited from her client: (1) that St. Hilaire had paid his reinstatement fee in person five days prior to his OAS arrest on March 25, 1986 and had been told at that time that the payment would be credited in two days; (2) that St. Hilaire had not been represented by a lawyer when he appeared at the District Court on April 16, 1986 to answer the OAS summons issued on March 25, 1986; (3) that St. Hilaire had thought he had entered a plea of not guilty to the OAS charge; and (4) that he learned he had been put down as having pled guilty when he was told to pay the fine and was too embarrassed to go back to the judge to straighten the matter out. Tr. 29, 30 (State's App. at App. 12-13).

During the argument on the motion in limine, the trial judge raised the issue of whether St. Hilaire knew on January 1, 1987 that the Secretary of State had revoked his license as an habitual offender. On this issue counsel for St. Hilaire originally had stated that she was contesting notice "to some extent at any rate." Tr. 4 (State's App. at App. 8). Pressed on this issue she stated:

> I think I'm going to offer that the evidence will show he understood he was under an indefinite suspension but did not understand he was an habitual offender.

Tr. 5 (State's App. at App. 9).

In light of this statement, the trial court's ruling on the motion in limine recognized the possibility that the

issue of notice might be an issue at trial. Tr. 18 (J.S.App. 15a). At trial, however, St. Hilaire did not offer any evidence on the issue of notice. The State offered a certificate from the Secretary of State pursuant to 29 M.R.S.A. § 58, reciting that St. Hilaire's license had been revoked on July 21, 1986 for an indefinite period as a result of the determination that St. Hilaire was an habitual offender, that notice of the revocation was mailed to St. Hilaire at his last known address no later than July 11, 1986, and that St. Hilaire's right to operate was still under revocation on January 1, 1987.[7]

At the close of the evidence St. Hilaire's counsel moved for a directed verdict on the ground, *inter alia,* that the State had failed to prove notice was received by the defendant. Tr. 42 (State's App. at App. 13-14). In response, the prosecutor pointed out that the Secretary of State's certificate recited that notice had been mailed to St. Hilaire's last known address. St. Hilaire's motion was denied. Tr. 42-43 (State's App. at App. 13-14).

The only other reference to the issue of notice was made by counsel for St. Hilaire during argument on sentencing immediately following the jury's verdict of guilty:

> Now, Jeffrey has some limited understanding of what he received in the mail in July of 1986. He understood he was placed on indefinite suspension; but as he told me, I never saw anything in there that said I was an habitual offender. I thought I was under indefinite suspension. That's why I applied for the work restricted permit.
>
> Further, it is not clear what he actually received. He did—he does admit he received something saying he was indefinitely suspended.

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[7]The Secretary's certificate is reproduced in the State's App. at App. 5-6.

Tr. 64 (State's App. at App. 16-17). Although not entered in evidence at trial,[8] the notice sent to St. Hilaire is contained in the record and is reproduced in the State's Appendix at App. 3-4.

St. Hilaire was sentenced to seven days in the Oxford County jail and a fine of $500.

Throughout the proceedings in the trial court, St. Hilaire never expressly raised any challenge based on the U. S. Constitution. On appeal to the Maine Supreme Judicial Court, however, St. Hilaire argued that the granting of the State's motion in limine violated due process, that the exclusion of the evidence offered by St. Hilaire (along with the admission of the Secretary's certificate) violated St. Hilaire's right to confront and cross-examine witnesses in violation of the Sixth Amendment, that the use of the uncounseled April 16, 1986 conviction as a basis for the habitual offender finding violated substantive due process and the Sixth Amendment, and that the alleged failure of the State to prove actual notice of the habitual offender designation violated procedural due process.

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ARGUMENT

I. THE CONSTITUTIONAL CLAIMS ASSERTED BY APPELLANT WERE NOT PROPERLY PRESENTED BELOW.

We recognize that where the highest court of a state assumes that a federal question is properly before it and

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[8]See n. 1 at 6, supra.

proceeds to decide the issue, this Court will not consider the issue of whether the federal question was properly presented below. R. Stern, E. Gressman & S. Shapiro, *Supreme Court Practice* § 3.22 at 158 (6th ed. 1986). In this case, however, the only federal questions that were even arguably considered by the Maine Supreme Judicial Court were St. Hilaire's claim that the Secretary of State could not base an habitual offender designation on a prior uncounseled conviction and his claim that the State's failure to prove actual notice violated due process. The former argument was not reached, however, because the Maine Supreme Judicial Court ruled that, as a matter of state law, St. Hilaire could not collaterally attack his designation as an habitual offender after he had failed to seek an administrative hearing before the Secretary. *See* J.S. App. 4a & n.5. This would appear to constitute an adequate state law ground sufficient to foreclose appellate review on this issue. *E.g., Herb v. Pitcairn,* 324 U.S. 117, 125 (1945). Moreover, although the Maine Supreme Judicial Court did discuss the issue of actual notice, its ruling was directed to the issue of whether the statute required proof of actual notice, and its only mention of any due process issue involving notice was contained in a parenthetical explanation of a "*Cf.*" citation. *See* J.S. App. 5a.

In our view, this is not sufficient for this Court to find that the constitutional issues in question were properly presented below. Moreover, the other constitutional claims now raised by St. Hilaire—that the application of 29 M.R.S.A. § 2298 unconstitutionally foreclosed St. Hilaire's defenses that 29 M.R.S.A. § 58 violates the confrontation clause, and that 29 M.R.S.A. § 58 establishes a conclusive

presumption in violation of due process—were never addressed by the Maine Supreme Judicial Court.

Nor does it appear that any of St. Hilaire's claims were otherwise properly preserved below. Thus, the record indicates that no federal constitutional claims were expressly raised in the trial court. The only claim that can arguably be said to have been even *implicitly* raised in the trial court was the contention that the State could not rely upon a prior uncounseled conviction.[9] While the issue of notice was raised, the only questions addressed were whether notice was contested and whether the State had adequately proven notice, not whether actual notice was required as a matter of due process.[10]

Although it does appear that St. Hilaire included most of the issues on which he now seeks review in his brief to the Maine Supreme Judicial Court,[11] this was not sufficient to preserve these issues. Under Maine law, issues that are not raised in the trial court cannot be raised for the first time on appeal. This is true even if the issues in question concern alleged violations of the U.S. Constitution. *E.g., Harrington v. Inhabitants of the Town of Garland,* 381 A.2d 639, 642-43 (Me. 1978).

In sum, it does not appear that the issues advanced by St. Hilaire were properly preserved below and this

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[9]See Tr. 30 (State's App. at App. 13) (offer of proof—without further explanation—that St. Hilaire was not represented by counsel on April 16, 1986).

[10]See Tr. 42 (State's App. at App. 13-14.

[11]The exception is the conclusive presumption argument contained in the Jurisdictional Statement at 14. We are unable to discern any mention of this argument in St. Hilaire's brief.

Court therefore should dismiss St. Hilaire's appeal for lack of jurisdiction. *E.g., Cardinale v. Louisiana,* 394 U.S. 437, 438-39 (1969). *See* R. Stern, E. Gressman & S. Shapiro, *Supreme Court Practice,* § 3.19 at 144 (6th ed. 1985).

In the alternative, as discussed below, we submit that regardless of whether St. Hilaire's claims were properly presented below, his appeal should be dismissed because none of his claims raises a substantial federal question.

II. APPELANT'S DUE PROCESS ATTACK ON THE APPLICATION OF 29 M.R.S.A. § 2298 MAY BE SUMMARILY REJECTED.

St. Hilaire's due process challenge to 29 M.R.S.A. § 2298 as applied, although argued in terms of the burden of proof and the presumption of innocence, reduces to the claim that it is constitutionally impermissible to foreclose St. Hilaire from asserting the invalidity of one of the three convictions on which his habitual offender designation was based. While St. Hilaire cites *Patterson v. New York,* 432 U.S. 197 (1977), to support his argument, that case actually supports the proposition that a state has the authority to determine for itself the elements of its crimes. In this case, as the decision of the Maine Supreme Judicial Court demonstrates, Maine has determined that the principal elements of a violation of 29 M.R.S.A. § 2298 are (1) the operation of a vehicle on a public way, and (2) the existence of a "then-effective" order revoking the operator's license pursuant to an habitual offender designation. *See* J.S. App. 3a, 5a, citing *State v. Vosmus,* 431 A.2d 621, 623 (Me. 1981).

We are aware of no authority suggesting that it violates due process for a state to require that a person who quarrels with his designation as an habitual offender raise his challenges to that designation (or any challenges to the convictions underlying that designation) *before* getting behind the wheel in violation of the Secretary of State's revocation order. As the Maine courts have made clear, the notion that a citizen may resort to "self-help" and ignore the revocation of his license, while retaining the right to challenge the revocation if he is caught, is contrary to the rule of law. *E.g., State v. O'Neill,* 473 A.2d 415, 417 (Me. 1984) ("a person may not take the law into his own hands by driving a motor vehicle in defiance of the State's determination that he is an habitual offender"); *State v. Higgins,* 338 A.2d 159 (Me. 1975). This principle is consistent with the decisions of this Court in such cases as *Walker v. City of Birmingham,* 388 U.S. 307, 320-21 (1967), and *United States v. United Mine Workers,* 330 U.S. 258 (1947). *See State v. Higgins,* 338 A.2d at 163-64.

Indeed, any argument that St. Hilaire could not constitutionally be prohibited from collaterally attacking the April 16, 1986 conviction is foreclosed by this Court's decision in *Lewis v. United States,* 445 U.S. 55 (1980), which upheld the prosecution of a felon for possessing a firearm notwithstanding the defendant's claim that one of the predicate felonies was constitutionally invalid because he had not been represented by counsel in violation of *Gideon v. Wainwright,* 372 U.S. 335 (1963), and its progeny. As this Court noted:

> It is important to note that a convicted felon may challenge the validity of a prior conviction or otherwise remove his disability before obtaining a firearm. We

> simply hold today that the firearms prosecution does not open the predicate conviction to a new form of collateral attack.

445 U.S. at 67.

III. APPELLANT DOES NOT HAVE STANDING TO COMPLAIN ABOUT THE FAILURE TO PROVE ACTUAL NOTICE; AND, IN ANY EVENT, HIS CLAIMS ARE WITHOUT MERIT.

The second aspect of St. Hilaire's due process attack on 29 M.R.S.A. § 2298 is based on the theory that it was not sufficient for the State to prove that notice of the habitual offender designation was sent to St. Hilaire; instead, St. Hilaire argues, the State had to prove that he had actually received the State's letter or otherwise had actual notice of the designation. As a preliminary matter, St. Hilaire does not have standing to raise this issue since, by his counsel's admission, he had received something in the mail in July of 1986 and understood at a minimum that he was indefinitely suspended from driving at that time. Tr. 64 (State's App. at App. 16-17); *see* Tr. 5 (State's App. at App. 9). Moreover, the record contains the notice that was in fact sent to St. Hilaire, which was contained in St. Hilaire's offer of proof, and that notice clearly informs St. Hilaire of his habitual offender designation and of his right to seek an administrative hearing. (State's App. at App. 3-4).

As a result, since St. Helaire himself had actual notice, he does not have standing to complain that 29 M.R.S.A. § 2298 as interpreted by the Maine Supreme Judicial Court does not require the State to prove that a defendant had

actual notice of the habitual offender designation. *See* J.S. App. 5a. As this Court has repeatedly held, a "plaintiff must assert his legal rights and interests and cannot rest his claim to relief upon the legal rights or interests of third parties." *Warth v. Seldin,* 422 U.S. 490, 499 (1975). *Accord, Broadrick v. Oklahoma,* 413 U.S. 601, 610 (1973) ("constitutional rights are personal and may not be asserted vicariously"); *McGowan v. Maryland,* 366 U.S. 420, 429 (1961).

Moreover, even assuming that St. Hilaire has standing to complain that due process is violated unless the State is required to prove actual notice, his claim is without merit. The decisions of this Court do not require that a person whose liberty or property interests are affected by governmental action must receive actual notice of that fact. *See, e.g., Mullane v. Central Hanover Trust Co.,* 339 U.S. 306, 314 (1950). Instead, all that is required is "notice reasonably calculated, under all the circumstances, to apprise interested parties of [the governmental action in question]." *Id.* The State here proved that it mailed notice of the habitual offender designation to St. Hilaire's last known address. (State's App. at App. 3-4). Due process requires no more.

Indeed, it can readily be seen that a contrary holding would significantly burden the State's ability to enforce its habitual offender law, since the State would almost never be capable of offering independent proof of actual notice.

IV. APPELLANT'S CLAIM THAT 29 M.R.S.A. § 2298 INFRINGES UPON HIS SIXTH AMENDMENT RIGHT TO COUNSEL IS FORECLOSED BY THIS COURT'S DECISION IN LEWIS v. UNITED STATES.

St. Hilaire also argues that the Secretary's use of a prior, uncounseled misdemeanor conviction as the basis for a habitual offender designation violates his Sixth Amendment right to counsel. The short answer to this argument is that this Court's decision in *Lewis v. United States,* 445 U.S. 55 (1980), specifically permitted a prior uncounseled felony conviction to serve as the predicate for a subsequent conviction under a federal statute prohibiting possession of firearms by convicted felons. In *Lewis* the Court noted that it had never suggested that uncounseled convictions were invalid for all purposes, 445 U.S. at 66-67, and held that such convictions could properly serve as the basis of imposing a civil disability on the possession of firearms. This was true even though the civil disability was enforceable by criminal sanctions. *Id.* at 67.

The same situation is presented in this case. St. Hilaire's April 16, 1986 conviction was used in this case as part of the basis for a civil disability imposed by the Secretary of State—specifically, the revocation of St. Hilaire's driver's license based on his designation as an habitual offender. While a violation of this civil disability is independently punishable as a Class C crime, this is not constitutionally impermissible under *Lewis.*[12]

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[12]In contrast, *Baldasar v. Illinois,* 446 U.S. 222 (1980), involved a situation where a prior uncounseled conviction was not used as the basis for a civil disability but instead used to impose an enhanced penalty of incarceration.

In fact, this is an easier case than *Lewis* because, even though St. Hilaire was unrepresented on the April 16, 1986 conviction, that conviction resulted in only a $50 fine and was not therefore in any way constitutionally invalid. *Scott v. Illinois,* 440 U.S. 367 (1979). In contrast, *Lewis* involved a prior uncounseled felony conviction that was invalid under *Gideon v. Wainwright,* 372 U.S. 335 (1963). In addition, although St. Hilaire attempts to distinguish *Lewis* on the ground that the violation of the civil disability in that case was only punishable as a misdemeanor, this is incorrect. The *Lewis* opinion itself recites that the applicable statute imposed a punishment of up to two years' imprisonment. 445 U.S. at 56 n.1.

V. APPELLANT'S CONFRONTATION CLAUSE AND CONCLUSIVE PRESUMPTION CLAIMS ARE WITHOUT MERIT.

St. Hilaire's remaining arguments are addressed to the constitutionality of 29 M.R.S.A. § 58. He argues that the trial court's admission of the Secretary of State's certificate pursuant to that section, combined with its granting of the State's motion in limine, denied him the right to confront and cross-examine the witnesses against him and established a conclusive presumption against him in violation of due process. The problem with this argument is that the State's motion in limine did not seek to quash St. Hilaire's subpoena for the Deputy Secretary of State and Chief Hearing Examiner, nor did it seek to bar St. Hilaire from challenging the statements contained in the Secretary's certificate. The motion in limine was solely addressed to St. Hilaire's argument that he was entitled to attack the validity of the April 16, 1986 conviction. *See* State's App. at App. 1-2.

When the trial court granted the State's motion, therefore, St. Hilaire was still free to call officials from the Secretary of State's office to the stand and cross-examine them about the statements in the certificate. He was also free to offer other evidence to controvert the certificate. As 29 M.R.S.A. § 58 expressly states, the Secretary of State's certificate constitutes only "prima facie" evidence, and there is nothing in the record to suggest that St. Hilaire was precluded from challenging the statements contained therein.

The reason St. Hilaire did not challenge those statements is that there is, in fact, no dispute (1) that St. Hilaire's license was revoked for an indefinite period on July 21, 1986 as a result of his being designated an habitual offender, (2) that notice was sent to St. Hilaire's last known address no later than July 11, 1986, and (3) that St. Hilaire's license was still under revocation on January 1, 1987, when he was stopped for operating a vehicle at an excessive rate of speed. (State's App. at App. 3-4). There is also no dispute that at the time of the habitual offender designation St. Hilaire had three outstanding convictions within the past five years that met the statutory criteria for an habitual offender. Finally, it is undisputed that none of St. Hilaire's conditions had been vacated or otherwise challenged at the time he was caught operating a vehicle on January 1, 1987.

St. Hilaire's confrontation clause and conclusive presumption arguments thus reduce to the proposition that he should have been entitled to look behind his habitual offender designation and attack the validity of the April 16, 1986 conviction. Since, as previously discussed, Maine

does not violate the Constitution by foreclosing an habitual offender from collaterally attacking the convictions underlying his designation, St. Hilaire's confrontation clause and conclusive presumption arguments fall of their own weight.

CONCLUSION

This appeal should be dismissed because the federal questions raised by St. Hilaire were not properly presented below. In the alternative, St. Hilaire's appeal should be dismissed because his claims do not raise any substantial federal question and do not warrant plenary review.

Respectfully submitted,

JAMES E. TIERNEY
Attorney General
State of Maine

THOMAS D. WARREN
Deputy Attorney General
(Counsel of Record)

State House Station #6
Augusta, ME 04333
(207) 289-3661

Attorneys for Appellee

Dated: Augusta, Maine
October 7, 1988

Appendix to State's Motion to Dismiss or Affirm

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APPENDIX A

NOV 17 1987

STATE OF MAINE OXFORD, SS.	SUPERIOR COURT CRIMINAL ACTION DOCKET NO. CR 87-51

STATE OF MAINE	)	MOTION IN
vs.	)	LIMINE
JEFFREY ST. HILAIRE	)	

Now comes the State of Maine and moves this court *in limine* to exclude testimony on the issue of whether or not the Secretary of State acted properly in declaring the defendant an Habitual Offender, for the following reasons:

1. The defendant cannot in the pending prosecution for driving after having been declared a Habitual Offender avoid conviction by leveling a collateral attack against the action of the Secretary of State as taken in a separate proceeding. *State v. Higgins,* 338 A.2d 159 (Me. 1975), *State v. Albert,* 418 A.2d 190 (Me. 1980); *Piacitelli v. Quinn,* 449 A.2d 1126 (Me. 1982); *State v. O'Neill,* 473 A.2d 415 (Me. 1984) and *Maines v. Secretary of State,* 493 A.2d 326 (Me. 1985).

2. This issue had been raised by the defendant in a prior Motion to Quash the Indictment, which was denied.

Wherefore, the State respectfully requests the testimony be excluded, and that the issues be limited to (1)

was the defendant operating a motor vehicle and (2) was the defendant a Habitual Offender.

Dated: November 17, 1987

/s/ Patricia A. Mador
Patricia A. Mador
Assistant District Attorney

ORDER

The above motion is hereby (granted) (*denied*).

Dated: November 17, 1987

/s/ Paul A. Fritzsche
Justice, Superior Court

APPENDIX B

Driver License Control
George E. Storer 289-2386

STATE OF MAINE
Department of State
Motor Vehicle Division
Augusta, Maine 04333

Linwood F. Ross
Deputy Secretary of State

Printed 07/08/86

NOTICE OF REVOCATION AND
OPPORTUNITY FOR HEARING

Mailed No Later Than 07/11/86
License Number: 7613132 Exp:89
Date of Birth: 02/07/64

Jeffrey St. Hilaire
RFD 1 Box 24
Auburn, ME 04210 S534

This is to notify you that your driving record, cited at least in part below has brought you within the statutory definition of an habitual offender. Found in 29 M.R.S.A., ch. 18-A. As a result of this, the Secretary of State is hereby notifying you that your motor vehicle operator's license and/or right to operate in the State of Maine, is revoked for an indefinite period effective 07/21/86. Please forward your driver's license, if you have one, to the Secretary of State by 07/21/86 using the enclosed envelope.

You have the opportunity to request a hearing within 30 days of your receipt of this notice. That hearing, if requested, will be held pursuant to 5 M.R.S.A., Sec. 9051 to 9064 and Chapter 2, rules for hearings of the Secretary of State, and will be limited to only two issues:

1. Whether you are the same person who has been convicted of the offenses cited, and
2. Whether your driving record does bring you within the definition of an habitual offender.

No other information is relevant to whether or not you are, in fact, an habitual offender.

Your license, and/or right to operate may be restored only by petitioning the Secretary of State, and you may not petition the Secretary of State until your license and/or right to operate has been revoked for a one year period. At that time, if your petition is successful, you must file proof of financial responsibility and pay a $25.00 reinstatement fee before your license is restored.

Note: If you are convicted of operating a motor vehicle while this revocation is in effect, then you are subject to penalties of up to $5,000.00 and/or 5 years imprisonment and an additional revocation period of up to 3 years.

Your Driving Record

Date	Offense
11/13/81	Operating Without License
02/29/84	Blood Alcohol Content .10 Plus
04/16/86	Operating After Suspension

Reply or questions
Should be addressed to: Driver Licensing and Control
Telephone: 207-289-3636

/s/ George E. Storer
George E. Storer
Deputy Secretary of State

APPENDIX C

STATE'S EXHIBIT #1

STATE OF MAINE

Department of State

I, the Secretary of State, of the State of Maine, certify that the office of the Secretary of State is the legal repository of the Great Seal of the State of Maine and also custodian of the records relating to the revocation, restoration and suspension of operators' licenses and registrations, and that the paper to which this is attached is a true copy from the records of this office.

I further certify that, according to our records the license or right to operate of Jeffrey St. Hilaire, whose date of birth is February 7, 1964, was revoked on July 21, 1986, for an indefinite period, as a result of Mr. St. Hilaire's being defined as Habitual Offender on that date in accordance with 29 MRSA, Section 2292.

That revocation is to remain in effect until after petitioning the Secretary of State, after filing proof of liability insurance coverage, and after completion of the mandatory revocation period.

Notice of revocation was mailed by regular mail, no later than July 11, 1986, to the last known address given by the licensee, which was RFD 1 Box 24, Auburn, Maine.

Mr. St. Hilaire's right to operate was under revocation on January 1, 1987.

I further certify that the attached copy is a true copy of his driving record as maintained by the Secretary of State, as of this date.

In Testimony Whereof, I have caused the Great Seal of the State to be hereunto affixed. GIVEN under my hand at Augusta, this twenty-eighth day of January in the year of our Lord one thousand nine hundred and eighty-seven.

/s/ Rodney S. Quinn
Secretary of State

(SEAL)

Form MVCR-104 Rev. 12/83

APPENDIX D

STATE OF MAINE
OXFORD, ss.

SUPERIOR COURT
CRIMINAL ACTION
Docket No. CR-87-51
Law Docket No. OXF-87-506

STATE OF MAINE,
Plaintiff,

vs.

JEFFREY ST. HILAIRE,
Defendant.

TRIAL PROCEEDINGS

(with jury)

BEFORE:

HONORABLE PAUL A. FRITZSCHE,
JUSTICE OF THE SUPERIOR COURT

Oxford County Courthouse
South Paris, Maine

November 17, 1987
1:21 p.m.

APPEARANCES:

For the Plaintiff: PATRICIA A. MADOR, Esq.

For the Defendant: NERIA R. DOUGLASS, Esq.

Penny L. Philbrick
Official Court Reporter

• • •

[portion deleted]

[3] The Court: So if I understand correctly, there is no question Mr. St. Hilaire was operating? There's no

question he was operating on a public way on the first of the year in Fryeburg?

The question becomes: Was he an habitual offender at that time? And you would say that even though he was on—at least on paper an habitual offender at that time and may or may not have known that but certainly was on paper an habitual offender, he—that was an improper designation because some five or so months later the District Court vacated [4] one of the three convictions which were necessary to obtain the habitual offender status, that being the final one, operating after suspension; so, therefore, even if Mr. St. Hilaire did not know that he was not an habitual offender—in other words, even if he thought he was an habitual offender—then he gets the benefit of finding out later that that was an incorrect designation?

Ms. Douglass: My position is that at the time, there'll be no issue about his operation, about his being on the public way. The issue in this case is going to be whether he was ever guilty of the operating after suspension that put him into this habitual offender category.

It is not as a matter of the vacating of that judgment that we raise this issue but as a matter of the facts that put him into the classification as being an habitual offender and our argument is that those facts existed on March 25, 1986 and are at issue in this case because those facts determine whether or not he is an habitual offender and when he was operating on the 1st of January in 1987, he was innocent because the designation of habitual offender, of which we were going to contest notice to some extent at any rate, was not correct.

[5] That designation as habitual offender is the essence of our—the jury's determination in our trial.

The Court: So you would say that—did Mr. St. Hilaire or did Mr. St. Hilaire not know on January 1 that the Secretary of State thought him to be an habitual offender?

Ms. Douglass: No. My position is the issue is whether he was, in fact, a habitual offender on January 1, 1987.

It's our position that he was not, regardless of what the State told him.

The Court: Are you willing, however, to answer my question as to what his views were on January 1?

Ms. Douglass: His—

The Court: You obviously don't have to because he doesn't have to make any admissions to me or anybody else.

Ms. Douglass: No. I think I'm going to offer that the evidence will show he understood he was under an indefinite suspenson but did not understand that he was an habitual offender.

* * *

[portion deleted]

[23] The Court: I believe that it may not be necessary; but in an abundance of caution, Miss Douglas would like to make an offer of proof on the record; and you have the floor. Say what you would like so that the Maine Supreme Court, in the [24] event of an appeal, knows precisely what your concerns are.

Ms. Douglass: Well, Judge, actually, I had anticipated that I would like to, perhaps at the close of the case, even while the jury's deliberating, put on the record the testimony of several witnesses that I have, including my own client and two employees of the State of Maine, Department of Motor Vehicles as—and there are also questions on cross-examination that I'm going to want to ask of Trooper Byron.

The Court: I don't think it's necessary to—when a person makes an offer of proof to do it in the detail you would had the matter been presented to the jury.

The purpose of an offer of proof is so that the appellate court can know what the issues are and what evidence has been excluded; and what's often done, though not always though, it's oftentimes sufficient is for the attorney to simply summarize what he or she expects would have been introduced or offered had the Judge ruled differently so—

Ms. Douglass: Then I'll summarize it, Judge.

The Court: I think that would be quicker, [25] and you will be fully protected.

Ms. Douglass: First, as to Trooper Byron, I would be asking him whether or not he understood that the Department of Motor Vehicles ever made any mistakes or had made any mistakes in computing Jeff St. Hilaire's record.

I would ask him whether or not he was aware that the designation of habitual offender was applied to Jeff St. Hilaire as a result of the State's delay in crediting Jeff St. Hilaire's reinstatement.

Also, I would submit to him the records of the Department of Motor Vehicles for his examination showing that Jeff St. Hilaire paid his reinstatement fee on March 20, 1986 and that their records state that he was under suspension at 6:05 a.m. on March 25, 1986 but he was not under suspension at 7:48 March 20, 198—excuse me, 25, 1986.

I would like to ask him his opinion as to whether he thinks that is fair conduct on the part of the Department of Motor Vehicles.

I would like to ask him his opinion of whether Jeffrey St. Hilaire's license should be restored as of 7:48 as opposed to 6:05 a.m. on the particular date on which he was stopped.

* * *

[colloquy deleted]

[27] The Court: Why don't you take a few more minutes if you like. I'm fully convinced this is entirely unnecessary. If you feel better, go head.

Ms. Douglass: Okay. Thank you.

The questions I generally—and I'll try and [28] give the general questions that I have for Mr. Storer, who is in charge of license control, would be on the policies of the State as to receipt of payment for reinstatement; and I may yet call him but I'm—just as they relate to the earlier issue, I would ask him why it took six days to credit his payment?

What are the employees of the Department of Motor Vehicles told to tell individuals as to the length of time it

takes to credit those because, in fact, Jeff St. Hilaire was told that it would take two days to credit that payment; and, in fact, it took three.

I'd ask him to explain what this business about the difference between 6:05 a.m. and 6:48 a.m. is as to March 25, 1986.

I'd ask him as to what he had as to written policies as to what employees tell members of the public who've paid reinstatement fees.

I'd ask him whether the correct record is as it exists on July 7, 1986, one of which I intend to offer, which shows that he is not an habitual offender.

Through Robert O'Connell, I would also question why it was that he refused appeal of this [29] issue on the basis of newly found evidence, which, as I say, is akin to Rule 60(b) but the—those administrative law judges will not consider and similar questions to those that I would ask of Mr. Storer.

I would ask them why that record of payment was never shown to Jeff St. Hilaire. I can't say. Wasn't discovered until I asked for all the computer printouts from the State March of 1987.

I'd ask them if they'd ever given that information to anyone else to see that it is, in fact, newly discovered evidence on our behalf and whether his license is correct now.

Further, I would offer evidence through Jeffrey St. Hilaire that he was told that his license should be credited with the reinstatement payment two days after it was received in Lewiston where he paid it and that he was surprised when he discovered that it wasn't, in fact, credited

for another six days or five days depending on how you count it.

I'd ask him and the same of O'Connell as to his attempts to pursue appeal of that administrative decision that was an habitual offender and what the status of that is now and, in fact, showed that it [30] is in litigation in the Androscoggin Superior Court and that the argument there is that newly discovered evidence warrants reopening that.

I'd offer proof that he wasn't represented by a lawyer when he went before Judge Beliveau on April 16, 1987—excuse me, '86 cocerning the March 25 charge from the Auburn Police Department and that he under—he understood he felt or thought he had pleaded innocent and that, in fact, learned that he was put down for guilty, when he paid, was told to pay $50 fine but through embarrassment, did not go back and get the judge's designation.

I guess that's a sum—a brief summary.

The Court: Thank you. There's nothing further, we'll bring the jury in and have them sworn and have opening statements.

* * *

[portion deleted]

[42] The Court: Why don't we all be seated.

Miss Douglass, why don't you go ahead. You had a motion to make.

Ms. Douglass: Yes, I do, Your Honor. I move for a directed verdict on the issue that the State has failed to prove that its records are correct.

It has failed to prove that notice was received by the Defendant; and on those issues, the State has failed to prove its case beyond a reasonable doubt.

The Court: Miss Mador.

Ms. Mador: Your Honor, at this juncture, the Court must view the evidence in the light most favorable to the State.

The evidence is that the Trooper observed the Defendant operating a motor vehicle on a public way while the habitual offender status was in effect.

The State has offered and has been admitted State's Exhibit No. 1 which is the self-authenticating document from the Secretary of State's office.

That document indicates that the notice of revocation was mailed by regular mail no later than July the 11, 1986 to the last known address of the [43] licensee which is RFD 1, Box 24, Auburn, Maine.

The only obligation is to mail notifications to the last address given by the licensee.

The State submits that based on the testimony of the officer coupled with the self-authenticating document and the Court's obligation to view the evidence in the light most favorable to the prosecution at this juncture, that it has met its burden; and the motion should be denied.

The Court: The motion is denied. Will the Defendant be calling any witnesses?

Ms. Douglass: No.

* * *

[portion deleted]

[62] The Court: Does the State have a sentencing recommendation?

Ms. Mador: Your Honor, the State would ask the Court to review the Defendant's motor vehicle record. That motor vehicle record is extensive.

The State would point out that the operating under the influence conviction in 1984 is a civil conviction; and upon my checking with the District Court in Lewiston, I've determined that the Defendant was not represented by counsel at that time.

The State would leave sentencing to the Court's discretion.

The Court: Ms. Douglass.

Ms. Douglass: Your Honor, the—it's difficult to say he's innocent of this charge. That's what we're going to be appealing; but I think the sentence has to take into consideration the fact that Jeffrey St. Hilaire has done everything in his power, after discovering the evidence of paper reinstatement fee which caused him to go into [63] the last category as habitual offender, to correct his motor vehicle license as, in fact, it has been corrected today.

The Court: Could you tell me what he did to correct it between March of '86 and January 1 of '87.

Ms. Douglass: In March of '86, he told the officer when he was stopped that he had paid his reinstatement fee. He thought he had. I'm just pointing out the facts from his perspective.

When he went before the judge, he was under the impression that he had pleaded innocent and was surprised when he learned that he had—was going to be paying the fee and that, I think, is something he misunderstood at least at the time of the arraignment because I think if you look at the record on that, that was an arraignment time, not a time for trial. That was April of 1986.

In October of 1986, he applied for a work restricted permit which was never, that I can see, even considered by the State. I don't think he received any notice whatsoever as to what—what they did with that application. They certainly took his money. In fact, I think you'll see in the record that he paid two reinstatement fees.

[64] In February of 1987—and I guess I'll go into the circumstances under which he was driving in January which is that his fiance didn't know how to get to the destination they were going to and so he was driving.

He hired me to clear up his matters in February of '87; and since then, I've been doing everything I could, including requesting records of all the computer entries.

He told me at that time, I never understood what happened because I paid my reinstatement fee; and they still said I was guilty. I thought I went and told the judge I wasn't guilty, and he said I was guilty.

Now, Jeffrey has some limited understanding of what he received in the mail in July of 1986. He understood he was placed on indefinite suspension; but as he told me, I never saw anything in there that said I was habitual offender. I thought I was under indefinite suspension. That's why I applied for the work restricted permit.

Further, it's not clear what he actually received. He did—he does admit he received something saying that he was indefinitely suspended.

The attempt to clarify his record began in [65] March of 198—February, I guess, but also in March of '87 when I pursued the circumstances of his suspension and in particular, the suspension in April of—that was conviction of April of 1986 as to his payment and if you look at the records that I submitted, it shows that he was supposedly declared an—under suspension at 6:05 a.m. when he was stopped but not at 7:48 a.m.

It shows on the records of the Department of Motor Vehicles that he paid his reinstatement fee and he paid this in person in Lewiston and he asked the personnel there how long it would take to process that.

She said, Two days; wait three to be safe. Well, he waited five days to drive. So at any rate, when he was stopped, he was told that he was under suspension and he thought that was just a computer error and it would be cleared up.

Then when he went to court, he didn't understand that he was put down for guilty.

• • •

[portion deleted]